

1 (“Agent Hedges”) stating his extensive credentials, along with background information
2 regarding computers and child pornography, including the nature and characteristics of those
3 associated with child pornography who treat such images as “prized possessions.” (*Id.* at 2:1–
4 5:6; 11:1–4). The affidavit further described his online undercover investigation and stated that
5 on October 2, 2012, Agent Hedges downloaded child pornography images made available for
6 downloading by IP address 68.229.54.147. (*Id.* at 4:27–5:12). Agent Hedges then connected to
7 the residence through records and surveillance. (*Id.* at 5:7–6:5).

8 In his Motion to Suppress, Defendant seeks a determination from this Court that the
9 search warrant application in this case lacked probable cause and was stale. (Mot. to Suppress
10 3:11–7:11, ECF No. 16). As such, Defendant argues that the search of the residence was a
11 violation of Defendant’s Fourth Amendment rights and that all evidence seized as a result of
12 this search must be suppressed. (*Id.* at 3:14 – 4:21). Defendant further argues that if the Court
13 finds that probable cause lacking, invalidating the warrant, then the Court should also find that
14 the good faith exception to a warrantless search does not apply. (Mot. to Suppress 7:12–9:7,
15 ECF No. 16). However, Judge Foley found that probable cause existed for this warrant and it
16 was not stale, so he recommended denial of the motion. (R. & R. 7:14–11:9, ECF No. 39).

17 **II. LEGAL STANDARD**

18 A party may file specific written objections to the findings and recommendations of a
19 United States Magistrate Judge made pursuant to Local Rule IB 1–4. 28 U.S.C. § 636(b)(1)(B);
20 D. Nev. R. IB 3–2. Upon the filing of such objections, the Court must make a *de novo*
21 determination of those portions of the Report to which objections are made. *Id.* The Court may
22 accept, reject, or modify, in whole or in part, the findings or recommendations of the Magistrate
23 Judge. 28 U.S.C. § 636(b)(1); D. Nev. IB 3–2(b).

1 **III. DISCUSSION**

2 Defendant asserts three objections to Judge Foley's Report and Recommendation
3 denying his Motion to Suppress. (Obj., ECF No. 40). First, Defendant argues that Judge Foley
4 erred in not allowing for an evidentiary hearing. (*Id.* at 4:13–5:27). Second, Defendant argues
5 that Judge Foley erred “by not addressing the lack of *ongoing* criminal activity” which caused
6 the search warrant to lack probable cause and be stale. (*Id.* at 6:1–8:21). Lastly, Defendant
7 claims that Judge Foley further erred in finding that the good faith exception would have
8 applied in this case if the warrant had failed. (*Id.* at 8:22–9:10).

9 Regarding Defendant's first objection, the Court agrees with Judge Foley that no
10 evidentiary hearing was necessary. A motion to suppress requires an evidentiary hearing “only
11 when the moving papers allege with sufficient definiteness, clarity, and specificity to enable the
12 trial court to conclude that contested issues of fact exist.” *United States v. Howell*, 231 F.3d
13 615, 620 (9th Cir. 2000). Further, “[a] hearing will not be held on a defendant's pre-trial
14 motion to suppress merely because a defendant wants one.” *Id.* at 621 (citation omitted).
15 Defendant argues that a question of fact exists “regarding whether there was information that
16 undermines the connection between the connection between the IP address and the residential
17 address associated with the internet subscriber to which the IP address is assigned.” (Obj. 4:24–
18 26, ECF No. 40). Judge Foley indicated, however, that “no such information” had been
19 provided here. (R. & R. 9:10, ECF No. 39). Defendant's objection even admits that he does not
20 know of any such information. (Obj. 5:9–12). Defendant fails to point to any definite or
21 specific allegations requiring an evidentiary hearing, and as such, no evidentiary hearing is
22 necessary.

23 For Defendant's second objection, the Court agrees with the analysis and findings of
24 Judge Foley in his Report and Recommendation (ECF No. 39) that probable cause existed for
25 the search warrant of the residence based on Agent Hedges affidavit and the information was

1 not stale. Specifically, the Court finds that probable cause existed for the search warrant of the
2 residence based on Agent Hedges downloading the child pornography images from a computer
3 with a specific IP address that made them available, along with the records and surveillance by
4 Agent Hedges connecting the residence with the IP address. *See Chism v. Wash.*, 661 F.3d 380,
5 390 (9th Cir. 2011) (“[A] computer that is connected to the internet can be *uniquely* identified
6 by its IP number . . . we have repeatedly recognized the utility of using IP address information
7 to investigate child pornography offenders.”). Further, the Court also finds that the affidavit
8 was not stale after two months, as “there is sufficient basis to believe, based on a continuing
9 pattern or other good reasons, that the items to be seized are still on the premises.” *United*
10 *States v. Lacy*, 119 F.3d 742, 745–46 (9th Cir. 1997); *see also United States v. Schesso*, 730
11 F.3d 1040, 1047 (9th Cir. 2013) (explaining that a good reason included a detective’s “affidavit
12 explaining that individuals who possess distribute, or trade in child pornography rarely, if ever,
13 dispose of sexually explicit images of children because these images are treated as prized
14 possessions.” (internal quotation marks omitted)). In *Lacy*, based on an affidavit similar to that
15 of Agent Hedges in describing the nature of child pornography, the Court found that a search
16 performed ten months after the images were downloaded was not stale. *Lacy*, 119 F.3d at 746.
17 While the Ninth Circuit in *Lacy* was specifically unwilling to extend such allowable delay
18 indefinitely, the time lapse here was clearly less than in *Lacy*. *Id.*; *see also Schesso*, 730 F.3d at
19 1047 (concluding that a twenty-month delay did not render the information stale). Therefore,
20 Defendant’s second objection is without merit.

21 Defendant’s third objection regarding the good faith exception is moot because the
22 Court finds that the search warrant was properly issued and executed.

23 Accordingly, the Court adopts the Report and Recommendation (ECF No. 39) and
24 denies Defendant’s Motion to Suppress (ECF No. 16).
25

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Report and Recommendation (ECF No. 39) is
3 **ACCEPTED and ADOPTED in full.**

4 **IT IS FURTHER ORDERED** that Defendant's Motion to Suppress (ECF No. 16) is
5 **DENIED.**

6 **DATED** this 23 day of December, 2015.

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10 Gloria M. Navarro, Chief Judge
11 United States District Court
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